

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES SALMINI,

Plaintiff,

v.

**3:06-CV-458
(FJS/DEP)**

**MICHAEL J. ASTRUE,¹ Commissioner of
Social Security,**

Defendant.

APPEARANCES

OF COUNSEL

LACHMAN & GORTON

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Attorneys for Plaintiff

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**SOCIAL SECURITY ADMINISTRATION
OFFICE OF REGIONAL GENERAL
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SHEENA V. WILLIAMS-BARR, SAUSA

SCULLIN, Senior Judge

ORDER

Plaintiff James Salmini filed this action seeking review of the Commissioner's denial of disability benefits under the Social Security Act based on various physical and mental

¹ As Magistrate Judge Peebles noted, pursuant to Fed. R. Civ. P. 25(d), Commissioner Michael J. Astrue is automatically substituted for former Commissioner Jo Anne B. Barnhart as Defendant in this case.

conditions, including ulcerative colitis, osteoarthritis of the left shoulder and knee, a heart condition, anxiety, and depression. Administrative Law Judge ("ALJ") Michael Brounoff issued a written decision denying Plaintiff benefits. The Appeals Council denied Plaintiff's request for review, and Plaintiff commenced this action.

In his December 16, 2008 Report and Recommendation, Magistrate Judge Peebles recommended that this Court grant Defendant's motion for judgment on the pleadings, affirm the Commissioner's determination, and dismiss Plaintiff's complaint. *See* Dkt. No. 12 at 31. On December 23, 2008, Plaintiff filed the following specific objections to the Report and Recommendation: (1) Magistrate Judge Peebles erred in finding that substantial evidence supported the ALJ's determination that Plaintiff could occasionally lift up to thirty-five pounds and the Appeals Council erred in not considering Plaintiff's affidavit to the contrary; and (2) Magistrate Judge Peebles erred in not considering Plaintiff's vocational expert's report regarding transferrable skills regarding the jobs the ALJ cited. *See* Dkt. No. 13. In addition, Plaintiff "re-state[d,]" by reference, all of the arguments that he made before Magistrate Judge Peebles. *See id.* at 7.

In reviewing the Commissioner's final decision, a court reviews that decision to determine whether the ALJ applied the correct legal standards and whether substantial evidence supports the decision. *See Charlton v. Comm'r of Soc. Sec.*, No. 08-CV-142, 2009 WL 838118, *2 (N.D.N.Y. Mar. 26, 2009) (citation omitted). Substantial evidence means relevant evidence a reasonable mind might find sufficient to support a conclusion. *See id.* (citation omitted). "In addition, an ALJ must set forth the crucial factors justifying his findings with sufficient specificity to allow a court to determine whether substantial evidence supports the decision." *Id.*

(quoting *Barringer v. Comm'r of Soc. Sec.*, 358 F. Supp. 2d 67, 72 (N.D.N.Y. 2005)).

Where a party makes specific objections to a magistrate judge's report, district courts engage in *de novo* review of the issues raised in the objections. *See Farid v. Bouey*, 554 F. Supp. 2d 301, 307 (N.D.N.Y. 2008). "If, however, the party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error." *Id.* at 306 (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007)).

With respect to Plaintiff's general objections and restated original arguments, after reviewing Magistrate Judge Peebles' Report and Recommendation, the Court finds no clear errors. Accordingly, the Court adopts those parts of Magistrate Judge Peebles' Report and Recommendation to which Plaintiff does not specifically object.

With respect to all of Plaintiff's specific objections, the Court, after a *de novo* review of the entire record, concludes that Magistrate Judge Peebles correctly applied the appropriate law and that Plaintiff's objections on these issues are without merit for the reasons that Magistrate Judge Peebles stated in his Report and Recommendation.

Accordingly, after carefully considering Magistrate Judge Peebles' Report and Recommendation, Plaintiff's objections thereto, as well as the applicable law, and for the reasons stated in Magistrate Judge Peebles' Report and Recommendation, the Court hereby

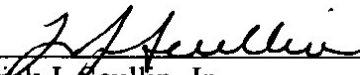
ORDERS that Magistrate Judge Peebles' December 16, 2008 Report and Recommendation is **ADOPTED** in its entirety; and the Court further

ORDERS that the Commissioner's decision is **AFFIRMED** and Plaintiff's Complaint is **DISMISSED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment for Defendant and close this case.

IT IS SO ORDERED.

Dated: June 23, 2009
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge